

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90

**Comments of
Alexicon Telecommunications Consulting**

Alexicon Telecommunications Consulting (Alexicon) files these comments in response to the Public Notice issued in the above-captioned proceeding relating to procedures for adjustments of Alternative Connect America Model (A-CAM) support due to the number of locations in eligible census blocks.¹

Alexicon provides professional management, financial and regulatory services to a variety of small rate-of-return Incumbent Local Exchange Carriers (ILECs) and their affiliates who serve diverse geographical areas characterized by rural, insular or Native American Tribal Lands. These ILECs, similar to most other small rate-of-return regulated ILECs, currently provide a wide range of technologically advanced services to their customers. These companies, through participation in various State and Federal high cost funding programs, and with their continued investment in network infrastructure, are providing customers in rural, insular and Tribal areas with services equal to or greater than urban areas, and at comparable pricing. Furthermore, these ILECs are

¹ *Wireline Competition Bureau Issues Corrected Alternative Connect America Model II Offers to 37 Companies, Extends the Election Deadline, and Seeks Comment on Location Adjustment Procedures*, Public Notice, WC Docket No. 10-90, DA 19-504 (rel. June 5, 2019) (*Public Notice*)

committed to providing their customers with innovative solutions, by adapting technologies that fit rural America, including broadband and IP-enabled services.

SUMMARY

The Wireline Competition Bureau (Bureau) correctly notes that discrepancies between the number of model-determined (funded) locations that A-CAM support recipients are expected to serve and the actual number of locations that can be served sometimes exist. There are many reasons this can take place, and it is oftentimes one of the more onerous analyses required to be done by potential A-CAM support recipients in deciding whether or not to elect the resultant support. Thus, there must be a rational, expedited, evidence-based process that carriers can utilize to demonstrate that model-based locations do not match those that exist in reality, and that this process cannot be a costly and burdensome one.

Alexicon will provide below some options for the Bureau to consider that balance the need for the reliability and validity of the data with keeping the cost and burden to all involved at a minimum. Furthermore, since this process will, by its very nature, contain a sometimes substantial margin of error, the Commission should not reduce support on the basis contained in 47 C.F.R. § 54.320 in cases where recipients do not meet 100% of the deployment obligations.

I. BACKGROUND

The Commission, with the first Connect America Fund (CAF) Phase II offers of support, adopted public interest obligations, one of which concerned the number of customer locations required to be served by broadband service at certain speeds and latency.² For rate-of-return regulated carriers, the ACAM offers of support were accompanied by similar location-based public

² *In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90, et. al., Report and Order and Further Notice of Proposed Rulemaking (rel. November 18, 2011, FCC 11-161) at 160

interest obligations.³ The locations determined for deployment obligations are generated by the Connect America Fund cost model (CACM) and are based on census data from 2011.⁴ Problems arise, as noted in the *Public Notice*, when carriers compare locations that actually exist in their service areas with the number of locations – generated by the CACM – that are established as deployment obligations tied to the offer of model-based support.

In the *Public Notice*, the Bureau correctly describes the problems that can arise from requiring model-based support recipients to meet deployment obligations that may have no basis in reality, and then penalizing carriers when those expectations are not met. Quoting from the *2016 RoR USF Reform Order*, the Bureau states “carriers that discover there is a widely divergent number of locations in their funded census blocks as compared to the model should have the opportunity to seek an adjustment to modify the deployment obligations.”⁵

The Bureau directs interested parties to the September 2018 *Locations Adjustment Public Notice*⁶ to provide a framework for discussion of issues facing ACAM support recipients when analyzing discrepancies between deployment obligation locations and reality-based locations. It should be noted that this public notice contains a discussion of difficulties facing CAF Phase II support recipients and deployment obligations – a matter that will be discussed further below. The *Locations Adjustment Public Notice* contains subjects on which comment is sought that deal with the definition of an actual location, the reliability and validity of data, relevant stakeholders’ evidence, submission of evidence, and other topics.

³ *In the Matter of Connect America Fund*, et. al., WC Docket No. 10-90, et. al., Report and Order, Order, and Order on Reconsideration and Further Notice of Proposed Rulemaking (rel. March 30, 2016, FCC 16-33) at 25 (*RoR USF Reform Order*)

⁴ *In the Matter of Connect America Fund*, WC Docket No. 10-90, Report and Order (rel. April 22, 2013, DA 13-807), at 52

⁵ *Public Notice* at 2

⁶ Wireline Competition Bureau Seeks Comment on Procedures to Identify and Resolve Discrepancies in Eligible Census Blocks Within Winning Bid Areas, Public Notice, WC Docket No. 10-90 (DA 18-929, rel. Sept. 10, 2018) (*September 2018 Locations Adjustment Public Notice*)

II. LOCATION DISCREPANCIES

The Bureau is correct in requesting comment on this issue, and given the ACAM II elections are due well before the issues raised in the Public Notice are resolved, resolution of these issues on an expeditious basis is of the utmost importance. There have been a significant number of problems identified by various parties related to discrepancies between model locations and locations identifiable on the ground, and there are multiple ways to identify these discrepancies.

USTelecom released some data on the efforts of the Broadband Mapping Coalition to implement its Broadband Serviceable Location Fabric (BSLF) proposal, which is a part of a comprehensive solution to broadband mapping issues.⁷ In that update, it was noted an analysis performed of the differences between the BSLF location counts and the 2011 United States Census Bureau data, upon which housing unit data incorporated in the CACM is based, “found that structure counts per census block...versus 2011 census housing structure data were the same only 36% of the time.” The analysis further found that “over 28.7% of the census blocks have BSLF location counts higher than census 2011 data, while 35.3% had fewer locations than the census data.”⁸

Two Iowa-based companies – Northeast Iowa Telephone Company and Western Iowa Telephone Association (NEIT and WIATEL) – filed a Petition for Clarification or Declaratory Ruling seeking clear guidance from the Commission on the definition of and how to count locations.⁹ In that Petition, the carriers request the Commission declare that “home-based

⁷ USTelecom Ex Parte communication, WC Docket Nos. 11-10, 10-90, and 19-126, filed July 1, 2019

⁸ *Id.*, at 2

⁹ *Joint Petition of Northeast Iowa Telephone Co. and Western Iowa Telephone Association, Petition for Clarification or Declaratory Ruling on the Definition of Location for Home Offices Under the Connect America Fund-Alternative Connect America Cost Model*, WC Docket 10-90 (May 6, 2019)

businesses that are registered with a State or other governmental entity and are located in eligible census blocks are considered locations and do not require separate subscriptions or facilities to count as such.”¹⁰ Part of the problem with accurately counting locations identified in the Petition is the apparent conflict between prior Commission decisions, FCC guidance, and directives issued by the Universal Service Administrative Company (USAC).

Alexicon recently filed a notice of Ex Parte communication that shows the problems when locations determined by the CACM do not comport with reality.¹¹ In these examples, situations are presented where model-based locations are both over- and under-represented as compared to the actual counts.

From these three examples, and the fact that the Bureau requested input on this problem, it is clear that ACAM I and II support recipients need guidance on how to handle any model-based and actual location discrepancies that may arise over the ten-year support term.

III. LOCATION DEFINITIONS

The first step in adopting a process where ACAM support recipients can identify and resolve discrepancies between model-determined locations and those that exist in reality is to clearly, and broadly, define “location.” In order to capture both the difficulties of location reporting when differences between model-determined and actual location counts exist, and the nature of broadband usage today and into the future, “location” needs to be defined as broadly, and flexibly, as possible.

The Iowa Petitioners (NEIT and WIATEL) bring up some key issues in defining “location”. First, as currently in existence, definitions of location are too subjective and open to

¹⁰ *Id.*, at 2

¹¹ See Alexicon Ex Parte Communication, filed July 18, 2019 in WC Docket Nos. 19-195 and 11-10, at p. 9-10

interpretation and conflict. Second, there should be a simple process to recognize home-based business locations that recognize the nature of these businesses, and also allow for an evidence-based process for counting service to those locations in satisfying a carrier's broadband deployment obligations. As noted in the Petition, there is a conflict between previous FCC decisions and how USAC, in its capacity as administrator of the High Cost Universal Broadband (HUBB) reporting system, interprets and allows the inclusion of different types of locations, including those related to home-based businesses.

NTCA, in a recent filing, notes a similar problem and need for a better definition of location.¹² Specifically, in discussing instances where multiple buildings are located on one property, NTCA states that “where businesses operate out of separate structures on the same property as a residence (such as agricultural production facilities), there should be no question that those businesses are appropriately counted as separate location under existing rules.” NTCA is correct – those types of locations, and others as argued below, should be counted as locations under current rules. However, this is not always the case, and the Commission should take the opportunity to clarify what is and is not a location.

The Broadband Mapping Coalition (BMC), a group of industry participants including USTelecom, has proposed a location-based broadband mapping system where the first step is to generate a database of every broadband serviceable location in the United States.¹³ In its recent draft Report and Order and Second Further Notice of Proposed Rulemaking on Establishing the Digital Opportunity Data Collection, the Commission recognizes the necessity of defining and identifying locations in the context of broadband mapping (or broadband deployment data

¹² See NTCA June 5, 2019 Ex Parte Notice, filed in WC Docket No. 10-90

¹³ See e.g., BMC April 12, 2019 Ex Parte filing, filed in WC Docket No. 11-10

collection).¹⁴ The BMC’s methodology involves “multiple algorithms to automatically process satellite imagery of building structures combined with parcel and land attribute data, address data, and other sources to identify and geocode structures that are broadband serviceable locations.”¹⁵ Implicit in this process is the need to decide which of the locations identified should qualify for meeting ACAM recipient deployment obligations.

Alexicon urges the Commission to define “location” in the context of allowing carriers to meet ACAM I and II broadband deployment obligations as broadly as possible. By allowing for a broad, and flexible, definition of location, the Commission can ensure the unavoidable discrepancies between model-based and actual locations can be reasonably and efficiently handled. This is especially important considering the data upon which current CACM-based locations are generated will soon be over a decade old and clearly outdated.¹⁶ Thus, support recipients must be able to identify locations based on accurate methodologies and with reasonable supporting evidence and, if necessary, certifications so as to best meet deployment obligations.

First, Alexicon agrees the Iowa companies – NEIT and WIATEL – that the presumption should be to count a home-based business location separately from the residential location. Alexicon also agrees with NTCA’s position that “where businesses operate out of separate structures on the same property as a residence (such as agricultural production facilities), there should be no question that those businesses are appropriately counted as separate location under existing rules.” Given the Internet of Things, precision agriculture¹⁷, and other current and future

¹⁴ *In the Matter of Establishing the Digital Opportunity Data Collection*, WC Docket No. 19-195, and *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, draft Report and Order and Second Further Notice of Proposed Rulemaking (FCCCIRC 1908-02) at 99

¹⁵ BMC May 28, 2019 Ex Parte Letter, filed in WC Docket No. 11-10, at 3-4

¹⁶ CACM locations are based, in part, on 2011 Census Bureau data

¹⁷ See e.g., *FCC Announces the Establishment of the Task Force for Reviewing Connectivity and Technology Needs of Precision Agriculture in the United States and Seeks Nominations for Membership*, Public Notice released June 17, 2019 (DA 19-568)

uses for broadband-based services, the presumption should be that a given location can be counted towards the completion of deployment obligations.¹⁸ If a question arises as to a location or set of locations being reported by an ACAM support recipient to USAC via the HUBB, then the reporting carrier should be required to submit relevant evidence as to the appropriateness of including that location or those locations.

IV. LOCATION ADJUSTMENT PROCEDURES AND SUPPORT REDUCTIONS

The Bureau directs interested parties to the *September 2018 Locations Adjustment Public Notice* where the Commission requested comment on the procedures for addressing location counting issues for CAF Phase II.¹⁹ In regards to the September 2018 Public Notice, the Bureau requests comment on “whether the procedure proposed in that instance would be appropriate for A-CAM recipients.” In addition, 47 C.F.R. § 54.320 requires a certain amount of support to be refunded in instances where the support recipient does not meet deployment obligations. Alexicon will present an argument below that no automatic pro-rata reduction in support should take place in circumstances where ACAM funded locations are overstated.

A. Location Adjustment Procedures

While at a high level, the issues raised in the *September 2018 Public Notice* may be similar to those facing ACAM support recipients, a closer review reveals this is not the case. First, CAF Phase II was a process where support was awarded via a competitive auction to qualified bidders. In contrast, the locations under possible review in this instance relate to support awarded to, and not bid upon by, rate-of-return regulated carriers. In CAF Phase II, the recipients were able to

¹⁸ See NEIT/WIATEL Petition at 5 for further discussion of why multiple locations on a single property or parcel should be counted towards deployment obligations

¹⁹ *Public Notice* at 2

construct their own service areas, where A-CAM recipients cannot. Second, the location discrepancies in CAF Phase II deployment obligations were considered at the census block level, as that was the minimum geographic area for support awards. For ACAM support recipients, support is awarded at the study area level, and thus location count discrepancies would normally encompass a much larger area.

ACAM support recipients should instead be able to, at any point during the 10 year term of support, petition the Commission and present sufficient competent evidence that the funded locations materially overstate the locations actually in existence. This is in contrast to the one-year deadline contemplated in the *September 2018 Locations Adjustment Public Notice*.²⁰ This evidence could include such items as physical inventories of actual locations, certifications of the actual need for broadband service at certain locations not considered by the CACM, results of comprehensive location counting efforts such as the BMC's Broadband Serviceable Location Fabric process, and anything else that demonstrates a specific location or group of locations indeed require (or could require within the Commission's adopted parameters) broadband service.

B. Reductions in Support

ACAM support recipients were recently reminded how final deployment obligations will be treated in regards to support recovery rules.²¹ In the *ACAM Locations Guidance Public Notice*, the Wireline Competition Bureau outlines the "final milestone" for ACAM deployment obligations as contained in 47 C.F.R. § 54.320(d)(2) and how that rule would result in reduced support for carriers not meeting that milestone. According to that rule, once it is determined that an ETC has

²⁰ *September 2018 Locations Adjustment Public Notice* at 19

²¹ *Wireline Competition Bureau Provides Guidance Regarding Alternative Connect America Model Final Deployment Obligations*, Public Notice, WC Docket No. 10-90 (DA 19-650, rel. July 12, 2019) (*ACAM Locations Guidance Public Notice*)

not met a final deployment obligation milestone, it will have twelve months to come into full compliance or support will be “recovered” by USAC from the carrier. It should also be noted that there are procedures in place in this rule should ETCs not meet interim milestones.

Alexicon urges the Commission to at least suspend operation, or threat of operation, of this rule until a final resolution is reached as to the issue raised in the *Public Notice*. Alternatively, the Commission could adopt a safe harbor as to the deployment obligations: for example, an ACAM support recipient that meets a certain percentage of its deployment obligations would be deemed in compliance and not subject to operation of 47 C.F.R. § 54.320.

Alexicon questions the rationale behind reducing support on the basis outlined in 47 C.F.R. § 54.320 when ACAM recipients do not meet final deployment obligation milestones. First, ACAM support recipients build *networks*, and as such, the cost of reaching each location in a given area does not represent the largest portion of costs. The CACM may bear this out as a high-level review appears to show “Node4” costs, presumably those most related to the costs related to individual locations, comprises an insignificant portion total investment.²² This fact, considered in conjunction with how rural broadband networks are actually built, argues for a large degree of caution before the Commission considers operation of 47 C.F.R. § 54.320(d)(2) as to ACAM support recipients, if not outright elimination of that rule for these carriers.

CONCLUSION

Alexicon appreciates the opportunity to provide input as to how to address discrepancies between funded and actual deployment obligation locations for ACAM support recipients. There is clearly an issue to be resolved, and Alexicon urges the Bureau and Commission to pause any

²² Results of an independent review performed by Alexicon of certain CACM data

threat of enforcement of 47 C.F.R. § 54.320 until there is a process in place to address these location discrepancy issues. Further, Alexicon recommends the Bureau and Commission define “location” as broadly and flexibly as possible, and adopt an ongoing process for ACAM support recipients to petition the Commission for adjustment of deployment obligations at any point during the ten year support term.

Respectfully Submitted,

Alexicon Telecommunications Consulting

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